

EXHIBIT A

Assigned for all purposes to: Stanley Mosk Courthouse, Judicial Officer: Robert Draper

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9 SANDRA BUSTAMANTE

10 SUPERIOR COURT FOR THE STATE OF CALIFORNIA

11 COUNTY OF LOS ANGELES

12 SANDRA BUSTAMANTE, an individual) CASE NO.: 22STCV10375
13 vs.)
14 Plaintiffs,) COMPLAINT FOR DAMAGES AND
15) DEMAND FOR JURY TRIAL BASED
16) UPON:
17) 1. DISCRIMINATION BASED ON
18) DISABILITY (GOVERNMENT
19) CODE SECTION 12900 ET. SEQ);
20) 2. VIOLATION OF GOVERNMENT
21) CODE SECTION 12945.2
22) CALIFORNIA FAMILY RIGHTS
23) ACT ("CFRA");
24) 3. VIOLATION OF LABOR CODE
25) SECTION 1102.5;
26) 4. WRONGFUL TERMINATION IN
27) VIOLATION OF PUBLIC POLICY
28) 5. INTENTIONAL INFILCTION OF
29) EMOTION DISTRESS.

30 Plaintiff, SANDRA BUSTAMANTE complains and alleges as follows:

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GENERAL ALLEGATIONS

(AGAINST ALL NAMED DEFENDANTS)

1. Plaintiff, SANDRA BUSTAMANTE (“Plaintiff”), is a female resident of the County of Los Angeles, State of California.

2. Plaintiff is informed and believes that at all times herein mentioned, Defendant, SLEEPSMED INC. ("SLEEPSMED") is and was a corporation employing Plaintiff and at least 5 more people within a 75-mile radius at 959 E. Walnut St. Ste 150, Pasadena, CA 91106.

3. Plaintiff is informed and believes that at all times herein mentioned, Defendant, SLEEPSMED OF CALIFORNIA INCORPORATED (“SLEEPSMED OF CALIFORNIA”) is and was a corporation employing Plaintiff and at least 5 more people within a 75-mile radius at 959 E. Walnut St. Ste 150, Pasadena, CA 91106.

4. Plaintiff is informed and believes that at all times herein mentioned, Defendant, BIOSERENITY USA INC. (“BIOSERENITY”) is and was a corporation employing Plaintiff and at least 5 more people within a 75-mile radius at 959 E. Walnut St. Ste 150, Pasadena, CA 91106.

5. Plaintiff is ignorant of the true names and capacities thereto whether individual, corporate, or associate, of those Defendants fictitiously sued as DOES 1 through 100 inclusive and so Plaintiff sues them by these fictitious names. Plaintiff is informed and believes that each of the DOE Defendant reside in the State of California and are in some manner responsible for the conduct alleged herein. Upon discovering the true names and capacities of these fictitiously named Defendants, Plaintiff will amend this complaint to show the true names and capacities of these fictitiously named Defendants.

6. Unless otherwise alleged in this complaint, Plaintiff is informed, and on the basis of that information and belief, alleges that at all times herein mentioned, each of the remaining co-Defendant, in doing the things hereinafter alleged, were acting within the course, scope, and

1 under the authority of their agency, employment, or representative capacity, with the consent of
2 her/his co Defendant.

3 7. Plaintiff worked for SLEEPSMED, SLEEPSMED OF CALIFORNIA and BIOSERENITY
4 from July 2015 to May 2021. In 2020 and 2021, Plaintiff was working as a patient care
5 coordinator.

6 8. Plaintiff has a physical disability of rheumatoid arthritis which is an inflammatory
7 and autoimmune disease and which limits Plaintiff's major life activities such as working and
8 socializing, and is therefore a physical disability under California Government Code Section 12926.
9 California Government Code Section 12926 (m)(1) (A) and (m)(1) (B) states that "Physical
10 disability" includes, but is not limited to, having any physiological disease, disorder, condition,
11 or anatomical loss that affects body's immunological system and limits a major life activity.
12 Working is a major life activity. Plaintiff's arthritis was diagnosed in about 2019. Plaintiff has to
13 undergo Chemotherapy in order to control her disability which weakens her immune system and
14 makes her susceptible to COVID 19. Defendant was aware of Plaintiff's disability and the
15 treatment Plaintiff had to undergo.

16 9. On June 24, 2020, Plaintiff's physician prescribed her to work from home due to her
17 disability making her more susceptible to COVID 19. Plaintiff worked from home from
18 September 2020 to March 12, 2021.

19 10. In March 2021, Defendants did not allow Plaintiff to continue working from home and
20 Plaintiff was placed on CFRA leave from March 15, 2021 to May 14, 2021. On or about May 17,
21 2021, Defendants refused to accommodate Plaintiff's disability by allowing her to work from
22 home and terminated her employment. Plaintiff was fired in retaliation for being disabled,
23 needing special accommodations of working from home due to COVID 19.

24 11. Plaintiff was fired in retaliation for being disabled and needing special accommodations,
25 taking CFRA leave as an accommodation, and needing to take disability leave and/or special
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1 accommodations of working remotely during the COVID 19 pandemic. Plaintiff was told by her
2 physician that she could work outside of her house in about September 2021.

3 12. All of the foregoing and following actions taken towards Plaintiff that are alleged in this
4 complaint were carried out by managerial employees and agents of each other acting in a
5 deliberate, cold, callous, malicious, oppressive, and intentional manner in order to injure and
6 damage Plaintiff.

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8 **FIRST CAUSE OF ACTION**

9 **DISCRIMINATION AND RETALIATION BASED ON DISABILITY**
10 **IN VIOLATION OF CALIFORNIA GOVERNMENT CODE SECTIONS 12900 ET. SEQ.**
11 **(AGAINST DEFENDANT SLEEPSMED, SLEEPSMED OF CALIFORNIA AND**
12 **BIOSERENITY ALL DOE DEFENDANTS)**

13 13. Plaintiff realleges the information set forth in Paragraphs 1-12 of the General Allegations,
14 and by this reference hereby incorporates these paragraphs into this cause of action as if they
15 were fully alleged herein.

16 14. Plaintiff has exhausted her administrative remedies under the California Fair Employment
17 and Housing Act. On March 17, 2022, Plaintiff filed charges of disability discrimination and
18 failure to accommodate disability, failure to engage in an interactive dialog, and retaliation for
19 having a disability and needing a disability leave and special accommodations against Defendant
20 SLEEPSMED a true and correct copy of which has been attached hereto, made a part hereof, and
21 marked as Exhibit 1. On March 17, 2022, the Department of Fair Housing and Employment
22 issued the Notice of Case Closure/Right-to-Sue Letter, allowing Plaintiff to sue said Defendant, a
23 true and correct copy of which has been attached hereto, made a part hereof, and Marked as
24 Exhibit 1.

1 15. Plaintiff has exhausted her administrative remedies under the California Fair Employment
2 and Housing Act. On March 17, 2022, Plaintiff filed charges of disability discrimination and
3 failure to accommodate disability, failure to engage in an interactive dialog, and retaliation for
4 having a disability and needing a disability leave and special accommodations against Defendant
5 SLEPPMED OF CALIFORNIA a true and correct copy of which has been attached hereto, made
6 a part hereof, and marked as Exhibit 1. On March 17, 2022, the Department of Fair Housing and
7 Employment issued the Notice of Case Closure/Right-to-Sue Letter, allowing Plaintiff to sue
8 said Defendant, a true and correct copy of which has been attached hereto, made a part hereof,
9 and Marked as Exhibit 1.

10 16. Plaintiff has exhausted her administrative remedies under the California Fair Employment
11 and Housing Act. On March 17, 2022, Plaintiff filed charges of disability discrimination and
12 failure to accommodate disability, failure to engage in an interactive dialog, and retaliation for
13 having a disability and needing a disability leave and special accommodations against Defendant
14 BIOSERENITY a true and correct copy of which has been attached hereto, made a part hereof,
15 and marked as Exhibit 1. On March 17, 2022, the Department of Fair Housing and Employment
16 issued the Notice of Case Closure/Right-to-Sue Letter, allowing Plaintiff to sue said Defendant, a
17 true and correct copy of which has been attached hereto, made a part hereof, and Marked as
18 Exhibit 1.

19 20 17. Plaintiff has a physical disability of rheumatoid arthritis which is an inflammatory
21 and autoimmune disease and which limits Plaintiff's major life activities such as working and
22 socializing, and is therefore a physical disability under California Government Code Section 12926.
23 California Government Code Section 12926 (m)(1) (A) and (m)(1) (B) states that "Physical
24 disability" includes, but is not limited to, having any physiological disease, disorder, condition,
25 or anatomical loss that affects body's immunological system and limits a major life activity.
26 Working is a major life activity. Plaintiff's arthritis was diagnosed in about 2019. Plaintiff has to
27 undergo Chemotherapy in order to control her disability which weakens her immune system and
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1 makes her susceptible to COVID 19. Defendant was aware of Plaintiff's disability and the
2 treatment Plaintiff had to undergo.

3 18. On June 24, 2020, Plaintiff's physician prescribed her to work from home due to her
4 disability making her more susceptible to COVID 19. Plaintiff worked from home from
5 September 2020 to March 12, 2021. In March 2021, Defendants did not allow Plaintiff to
6 continue working from home and Plaintiff was placed on CFRA leave from March 15, 2021 to
7 May 14, 2021. On or about May 17, 2021, Defendants failed to engage in interactive process,
8 refused to accommodate Plaintiff's disability by allowing her to work from home and terminated
9 her employment. Plaintiff was fired in discrimination and retaliation for being disabled, needing
10 special accommodations of working from home due to COVID 19 pandemic.

11 19. This cause of action is based upon:

- 12 a. California Government Code Section 12940(a), which prohibits employers from
13 discriminating against their employees because of their employee's physical
14 disability, for terminating Plaintiff in discrimination of her disability and taking a
15 disability leave;
- 16 b. Government Code section 12926 (m) provides that physical disability, and
17 medical condition, includes a perception that the person has any of those
18 characteristics;
- 19 c. California Regulations, Title 2, Section 11065 (d) (2) which defines physical
20 disabilities as a disorder affecting one or more of the body's major life activities;
- 21 d. California Regulations, Title 2, Section 11065 (l) which defines "major life
22 activities" to include caring for one's self, performing manual tasks, walking and
23 working;
- 24 e. California Government Code Section 12926 (m)(B)(iii) which defines "major life
25 activities" to include physical, mental, and social activities and working.

- 1 f. California Government Code Section 12926 (m)(3) which defines a "physical
2 disability" to include having a record or history of a disease, condition, or health
3 impairment as defined in section (m)(1) or (2), which is known to the employer;
- 4 g. California Government Code Section 12926 (m)(1) (A) and (m)(1) (B) which
5 states that "Physical disability" includes, but is not limited to, all of the following:
Having any physiological disease, disorder, condition, or anatomical loss that
affects body's neurological system, musculoskeletal system, or cardiovascular
system;
- 6 h. California Government Code Section 12926 (m)(1) (B) (ii) which states that a
physiological disease, disorder, condition, or anatomical loss limits a major life
activity if it makes the achievement of the major life activity difficult;
- 7 i. California Government Code Section 12940(h) which prohibits supervisors and
employers from retaliating against employees when employees do not put up with
statutorily prohibited conduct and exercise their rights under the Fair Employment
and Housing Act for terminating Plaintiff in retaliation for taking a disability
leave;
- 8 j. California Government Code Section 12940(m), which makes it unlawful for an
employer to fail to make special accommodations for the known physical
disability of an employee for terminating Plaintiff and refusing to provide
Plaintiff disability leave and refusing to engage in an interactive dialogue to figure
out whether Plaintiff would need any special accommodations to accommodate
her disability;
- 9 k. California Government Code Sections 12900, 12921, 12926, 12926(h)(2),
12926(h)(1), 12926(i)(1), 12965.

20. Plaintiff alleges that the code sections enumerated above were violated because
Defendants terminated Plaintiff in discrimination for her disability and in retaliation for taking a

1 disability leave in violation of the California Government Code Sections 12940(a) and 12940 (h).
2 Defendants violated Government Code Sections 12940 et seq. by intentionally and maliciously
3 terminating Plaintiff even though she applied to take a protected leave generally violating
4 Government Code Sections 12940 et seq. Plaintiff alleges that Defendants' blatant disregard for
5 the laws enumerated in the above paragraph allows Plaintiff to recover punitive damages in an
6 amount to be determined at trial.

7 21. At all times relevant herein, Plaintiff performed her duties as an employee of defendant in
8 a competent, successful, and professional manner. Plaintiff is informed, believes, and thereon
9 alleges that Plaintiff was not fired for any reason related to her work performance. Plaintiff
10 alleges her termination was based upon her physical disability and need for special
11 accommodations. Plaintiff alleges that despite her physical disability, she could still perform the
12 essential functions of her job with Defendants, with special accommodations.

13 22. As a direct, foreseeable, and proximate result of the conduct of said Defendants, the
14 Plaintiff has suffered, and continues to suffer severe emotional distress, substantial losses in
15 salary, bonuses, job benefits, and other employment benefits which she would have received
16 from said Defendants, plus expenses incurred in obtaining substitute employment and not being
17 regularly employed for months, being without a source of income and medical insurance during
18 her employment all to her damage in a sum within the jurisdiction of this court, to be ascertain
19 according to proof. Plaintiff also prays for all equitable relief awardable pursuant to *Harris v.*
20 *City of Santa Monica* (2013) 56 Cal.4th 203.

21 23. Defendants acted in a grossly reckless, and/or intentional, malicious, and bad faith manner
22 when they willfully violated the statutes enumerated in this cause of action and retaliated against
23 the Plaintiff for refusing to comply with their willful violations of the above referenced statutes
24 and terminating the Plaintiff in violation of the law.

25 24. The Plaintiff is entitled to punitive damages against said Defendants, and each of them, in
26 an amount within the jurisdiction of this court, to be ascertained by the fact finder, that is
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1 sufficiently high enough to punish said Defendants, deter them from engaging in such conduct
2 again, and to make an example of them to others.

3 25. The Plaintiff also prays for reasonable costs and attorney fees and costs against said
4 Defendants named in this cause of action, as allowed by California Government Code Section
5 12965 for the Plaintiff's prosecution of this action in reference to the time the Plaintiff's attorneys
6 spend pursuing this cause of action.
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8 **SECOND CAUSE OF ACTION**
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10 **VIOLATION OF GOVERNMENT CODE SECTION 12945.2**
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12 **CALIFORNIA FAMILY RIGHTS ACT ("CFRA")**
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14 **(AGAINST DEFENDANT SLEEPSMED, SLEEPSMED OF CALIFORNIA AND
15 BIOSERENITY ALL DOE DEFENDANTS)**
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17 26. Plaintiff realleges the information set forth in Paragraphs 1-12 of the General Allegations,
18 Paragraphs 13-25 of the First Cause of Action and hereby incorporates these paragraphs as
19 though fully set forth and alleged herein.

20 27. Plaintiff has exhausted her administrative remedies under the California Fair Employment
21 and Housing Act. On March 17, 2022, Plaintiff filed charges for violation of the CFRA, failure
22 to reinstate, and retaliation charge against SLEEPSMED, a true and correct copy of which has
23 been attached hereto, made a part hereof, and marked as Exhibit 1. On March 17, 2022, the
24 Department of Fair Housing and Employment issued the Notice of Case Closure/Right-to-Sue
25 Letter, allowing Plaintiff to sue said Defendant, a true and correct copy of which has been
26 attached hereto, made a part hereof, and Marked as Exhibit 1.

27 28. Plaintiff has exhausted her administrative remedies under the California Fair Employment
28 and Housing Act. On March 17, 2022, Plaintiff filed charges for violation of the CFRA, failure
to reinstate, and retaliation charge against SLEEPSMED OF CALIFORNIA, a true and correct

1 copy of which has been attached hereto, made a part hereof, and marked as Exhibit 1. On March
2 17, 2022, the Department of Fair Housing and Employment issued the Notice of Case
3 Closure/Right-to-Sue Letter, allowing Plaintiff to sue said Defendant, a true and correct copy of
4 which has been attached hereto, made a part hereof, and Marked as Exhibit 1.

5 29. Plaintiff has exhausted her administrative remedies under the California Fair Employment
6 and Housing Act. On March 17, 2022, Plaintiff filed charges for violation of the CFRA, failure
7 to reinstate, and retaliation charge against BIOSERENITY, a true and correct copy of which has
8 been attached hereto, made a part hereof, and marked as Exhibit 1. On March 17, 2022, the
9 Department of Fair Housing and Employment issued the Notice of Case Closure/Right-to-Sue
10 Letter, allowing Plaintiff to sue said Defendant, a true and correct copy of which has been
11 attached hereto, made a part hereof, and Marked as Exhibit 1.

12 30. This cause of action is based upon the violation of the California Government Code
13 Section 12945.2, California Family Rights Act (“CFRA”), which states it shall be an unlawful
14 employment practice for any employer to refuse to grant a request by any employee with more
15 than 12 months of service with the employer, and who has at least 1,250 hours of service with
16 the employer during the previous 12-month period, to take up to a total of 12 workweeks in any
17 12-month period for family care and medical leave as long as the employer employs 5 or more
18 employees within 75 mile radius of Plaintiff’s employment. Family care and medical leave
19 requested pursuant to this subdivision shall not be deemed to have been granted unless the
20 employer provides the employee, upon granting the leave request, a guarantee of employment in
21 the same or a comparable position upon the termination of the leave. California Government
22 Code Section 12945.2 (k) (1) states it shall be an unlawful employment practice for an employer
23 to refuse to hire, or to discharge, fine, suspend, expel, or discriminate against, any individual
24 because of an individual’s exercise of the right to family care and medical leave. California
25 Government Code Section 12945.2(q) sates it shall be an unlawful employment practice for an
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1 employer to interfere with, restrain, or deny the exercise of, or the attempt to exercise, any right
2 provided under this section.

3 31. Plaintiff has a physical serious health condition of rheumatoid arthritis which is an
4 inflammatory and autoimmune disease and undergoes chemotherapy in order to control her
5 condition which weakens her immune system and makes her susceptible to COVID 19.
6 Plaintiff's physician prescribed her to work from home due to her condition during COVID 19.
7 Defendants placed Plaintiff on CFRA leave from March 15, 2021 to May 14, 2021. On or about
8 May 17, 2021, Defendants refused to reinstate Plaintiff and terminated her in retaliation for
9 exercising her rights under CFRA and taking leave of absence under CFRA for which she
10 qualified.

11 32. Plaintiff believes she was fired in retaliation for taking leave for a serious health condition
12 under CFRA. Plaintiff alleges that had she not suffered from a serious health condition of
13 rheumatoid arthritis and not needed chemotherapy which weakened her immune system she
14 would not have been terminated. Plaintiff was not reinstated after she returned from her CFRA
15 leave. She was terminated. Plaintiff's taking CFRA leave was a substantial motivating factor in
16 Defendant's reason to terminate Plaintiff.

17 33. As a direct, foreseeable, and proximate result of the actions of said Defendants, as
18 described in this cause of action, Plaintiff has suffered, and continues to suffer, severe emotional
19 distress, substantial losses in salary, bonuses, job benefits, and other employment benefits she
20 would have received from said Defendants plus expenses incurred in obtaining substitute
21 employment and not being regularly employed for months, as well as financial losses, all to
22 Plaintiff's damage, in a sum within the jurisdiction of this court, to be ascertained according to
23 proof.

24 34. As a further direct and proximate result of said Defendants' unlawful discrimination and
25 failures under this act, Plaintiff has suffered, and continues to suffer, extreme and severe anguish,
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humiliation, emotional distress and mental suffering, in a sum within the jurisdiction of this court, to be ascertain according to proof.

35. Defendants acted in a grossly reckless, and/or intentional, malicious, and bad faith manner when they willfully violated the statutes enumerated in this cause of action and retaliated against Plaintiff for refusing to comply with their willful violations of the above referenced statutes and terminating Plaintiff in violation of the law.

36. Plaintiff is entitled to punitive damages against said Defendants, and each of them, in an amount within the jurisdiction of this court, to be ascertained by the fact finder that is sufficiently high enough to punish said Defendants, deter them from engaging in such conduct again, and to make an example of them to others.

37. Plaintiff also prays for reasonable costs and attorney fees and costs against said Defendants named in this cause of action, as allowed by California Government Code Section 12965 for Plaintiff's prosecution of this action in reference to the time Plaintiff's attorneys spend pursuing this cause of action.

THIRD CAUSE OF ACTION

VIOLATIONS OF LABOR CODE SECTIONS 1102.5(h) AND (c)

**(AGAINST DEFENDANT SLEPMED, SLEPMED OF CALIFORNIA AND
BIOSERENITY ALL DOE DEFENDANTS)**

38. Plaintiff realleges the information set forth in Paragraphs 1-12 of the General Allegations, Paragraphs 13-25 of the First Cause of Action, Paragraphs 26-37 of the Second Cause of Action and hereby incorporates these paragraphs as though fully set forth and alleged herein.

39. This cause of action is under the Labor Code Section 1102.5(b) which states that an employer shall not retaliate against an employee for disclosing information, or because the employer believes that the employee disclosed or may disclose information, to a person with

1 authority over the employee or another employee who has the authority to investigate, discover,
2 or correct the violation or noncompliance, or if the employee has reasonable cause to believe that
3 the information discloses a violation of state or federal statute, or a violation of or
4 noncompliance with a local, state, or federal rule or regulation, regardless of whether disclosing
5 the information is part of the employee's job duties. Plaintiff alleges that she was terminated in
6 retaliation for being disabled, asserting her right to special accommodation, taking CFRA leave
7 to deal with her serious health condition as alleged in Paragraphs 8-11, the First and the Second
8 Causes of Action in violation of California Labor Code Section 1102.5(b).

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10 40. This cause of action is under the Labor Code Section 1102.5(c) which prohibits retaliation
11 of an employee who refuses to participate in an activity that would violate a statute. Plaintiff
12 alleges that she was terminated in retaliation for being disabled, asserting her right to special
13 accommodation, taking CFRA leave to deal with her serious health condition as alleged in
14 Paragraphs 8-11, the First and the Second Causes of Action in violation of California Labor
15 Code Section 1102.5(c).

16 41. Plaintiff is informed, believes, and based thereon, alleges that said Defendants terminated
17 her employment in violation of the Labor Code Sections 1102.5(b), and 1102.5(c) in retaliation
18 for being disabled, asserting her right to special accommodation, taking CFRA leave to deal with
19 her serious health condition as alleged in Paragraphs 8-11, the First and the Second Causes of
20 Action, which violate the following public policies:

- 21 a. California Government Code Section 12940(a), which prohibits employers from
22 discriminating against their employees because of their employee's physical
23 disability, for terminating Plaintiff in discrimination of her disability and taking a
24 disability leave;
- 25 b. Government Code section 12926 (m) provides that physical disability, and
26 medical condition, includes a perception that the person has any of those
27 characteristics;

- c. California Regulations, Title 2, Section 11065 (d) (2) which defines physical disabilities as a disorder affecting one or more of the body's major life activities;
- d. California Regulations, Title 2, Section 11065 (l) which defines "major life activities" to include caring for one's self, performing manual tasks, walking and working;
- e. California Government Code Section 12926 (m)(B)(iii) which defines "major life activities" to include physical, mental, and social activities and working.
- f. California Government Code Section 12926 (m)(3) which defines a "physical disability" to include having a record or history of a disease, condition, or health impairment as defined in section (m)(1) or (2), which is known to the employer;
- g. California Government Code Section 12926 (m)(1) (A) and (m)(1) (B) which states that "Physical disability" includes, but is not limited to, all of the following: Having any physiological disease, disorder, condition, or anatomical loss that affects body's neurological system, musculoskeletal system, or cardiovascular system;
- h. California Government Code Section 12926 (m)(1) (B) (ii) which states that a physiological disease, disorder, condition, or anatomical loss limits a major life activity if it makes the achievement of the major life activity difficult;
- i. California Government Code Section 12940(h) which prohibits supervisors and employers from retaliating against employees when employees do not put up with statutorily prohibited conduct and exercise their rights under the Fair Employment and Housing Act for terminating Plaintiff in retaliation for taking a disability leave;
- j. California Government Code Section 12940(m), which makes it unlawful for an employer to fail to make special accommodations for the known physical disability of an employee for terminating Plaintiff and refusing to provide

1 Plaintiff disability leave and refusing to engage in an interactive dialogue to figure
2 out whether Plaintiff would need any special accommodations to accommodate
3 her disability;

4 k. California Government Code Sections 12900, 12921, 12926, 12926(h)(2),
5 12926(h)(1), 12926(i)(1), 12965;

6 l. California Government Code Section 12945.2 et sec, California Family Rights
7 Act (“CFRA”), which states it shall be an unlawful employment practice for any
8 employer to refuse to grant a request by any employee with more than 12 months
9 of service with the employer, and who has at least 1,250 hours of service with the
10 employer during the previous 12-month period, to take up to a total of 12
11 workweeks in any 12-month period for family care and medical leave as long as
12 the employer employs 50 or more employees within 75 mile radius of Plaintiff’s
13 employment. Family care and medical leave requested pursuant to this
14 subdivision shall not be deemed to have been granted unless the employer
15 provides the employee, upon granting the leave request, a guarantee of
16 employment in the same or a comparable position upon the termination of the
17 leave;

18 m. California Government Code Section 12945.2(q) which sates it shall be an
19 unlawful employment practice for an employer to interfere with, restrain, or deny
20 the exercise of, or the attempt to exercise, any right provided under this section;

21 n. California Government Code Section 12945.2 (k) (1) states it shall be an unlawful
22 employment practice for an employer to refuse to hire, or to discharge, fine,
23 suspend, expel, or discriminate against, any individual because of an individual’s
24 exercise of the right to family care and medical leave;

25 o. California Labor Code Section 1102.5(b) which states that an employer shall not
26 retaliate against an employee for disclosing information, or because the employer
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1 believes that the employee disclosed or may disclose information, to a person
2 with authority over the employee or another employee who has the authority to
3 investigate, discover, or correct the violation or noncompliance, or if the
4 employee has reasonable cause to believe that the information discloses a
5 violation of state or federal statute, or a violation of or noncompliance with a
6 local, state, or federal rule or regulation, regardless of whether disclosing the
7 information is part of the employee's job duties;

8 p. California Labor Code Section 1102.5(c) which prohibits retaliation of an
9 employee who refuses to participate in an activity that would violate a statute;
10 q. All other state and federal statutes, regulations, administrative orders, and
11 ordinances which effect society at large, and which discovery will reveal were
12 violated by all named and DOE Defendants by discriminating and retaliating
13 against Plaintiff, and firing Plaintiff.

14 42. Said Defendants' actions, alleged in this cause of action, directly and proximately resulted
15 in Plaintiff suffering and continuing to suffer, extreme and severe anguish, humiliation,
16 embarrassment, emotional distress, mental suffering, nervousness, tension, anxiety, and
17 depression, and causing Plaintiff to incur future medical bills, all to Plaintiff's detriment in a sum
18 within the jurisdiction of this court, to be ascertained according to proof.

19 43. As a direct, foreseeable, and proximate result of the conduct of Defendants, named in this
20 cause of action, Plaintiff has suffered, and continues to suffer emotional distress, substantial
21 losses in salary, bonuses, job benefits, and other employment benefits which she would have
22 received from said Defendants, plus expenses incurred in obtaining substitute employment and
23 not being regularly employed for months, being without a source of income and benefits all to
24 Plaintiff's damage in a sum within the jurisdiction of this court, to be ascertained according to
25 proof. Plaintiff also prays for all equitable relief awardable pursuant to *Harris v. City of Santa*
26 *Monica* (2013) 56 Cal.4th 203.
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1 44. The grossly reckless, and/or intentional, malicious, and bad faith manner in which said
2 Defendants engaged in those acts as described in this cause of action by willfully violating the
3 statutes enumerated in this cause of action and retaliating against Plaintiff by terminating
4 Plaintiff in violation of the law, Plaintiff is entitled to punitive damages against said Defendants
5 in an amount within the jurisdiction of this court, to be ascertained by the fact finder, that is
6 sufficiently high to punish said Defendants, deter them from engaging in such conduct again, and
7 to make an example of them to others.

8 45. Plaintiff is informed, believes, and based thereon, alleges that the outrageous conduct of
9 said Defendants described above were done with oppression and malice by Plaintiff's supervisor
10 and managers and done with a conscious disregard for Plaintiff's rights and with the intent,
11 design and purpose of injuring Plaintiff. These unlawful acts were ratified by those other
12 individuals who were managing agents of said Defendant employers. By reason thereof,
13 Plaintiff is entitled to punitive or exemplary damages against said Defendant, for their acts as
14 described in this cause of action in a sum to be determined at the time of trial.

15 46. Plaintiff prays for the \$10,000 civil penalty that Labor Code Section 1102.5(e) imposes,
16 as well as all other remedies available under Labor Code Section 1102.5 against each Defendant.
17 Plaintiff prays for all recoverable penalties, including the up to \$10,000 penalty allowed under
18 Labor Code § 1102.5(f) and its enhanced burden of proof.

19 47. Plaintiff prays for attorney fees for pursuing this cause of action per Labor Code
20 §1102.5(j).

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FOURTH CAUSE OF ACTION

WRONGFUL TERMINATION IN VIOLATION OF PUBLIC POLICY

(AGAINST DEFENDANT SLEEPMED, SLEEPMED OF CALIFORNIA AND

BIOSERENITY ALL DOE DEFENDANTS)

48. Plaintiff realleges the information set forth in Paragraphs 1-12 of the General Allegations, Paragraphs 13-25 of the First Cause of Action, Paragraphs 26-37 of the Second Cause of Action, Paragraphs 38-47 of the Third Cause of Action, and hereby incorporates these paragraphs as though fully set forth and alleged herein.

49. Under California law, no employee, whether they are an at-will employee, or an employee under a written or other employment contract, can be terminated for a reason that is in violation of a fundamental public policy. In recent years, the California court has interpreted a fundamental public policy to be any articulable constitutional, statutory provision, or regulation that is concerned with a matter effecting society at large rather than a purely personal or proprietary interest of the employee or the employer. Moreover, the public policy must be fundamental, substantial, and well established at the time of discharge.

50. Plaintiff is informed, believes, and based thereon, alleges that said Defendants terminated her employment in retaliation for being disabled, asserting her right to special accommodation, taking CFRA leave to deal with her serious health condition as alleged in Paragraphs 8-11, the First, the Second, and the Third Causes of Action. Defendant's conduct described in the above sentence violates the following statutes that effect society at large:

- a. California Government Code Section 12940(a), which prohibits employers from discriminating against their employees because of their employee's physical disability, for terminating Plaintiff in discrimination of her disability and taking a disability leave;

- 1 b. Government Code section 12926 (m) provides that physical disability, and
2 medical condition, includes a perception that the person has any of those
3 characteristics;
- 4 c. California Regulations, Title 2, Section 11065 (d) (2) which defines physical
5 disabilities as a disorder affecting one or more of the body's major life activities;
- 6 d. California Regulations, Title 2, Section 11065 (l) which defines "major life
7 activities" to include caring for one's self, performing manual tasks, walking and
8 working;
- 9 e. California Government Code Section 12926 (m)(B)(iii) which defines "major life
10 activities" to include physical, mental, and social activities and working.
- 11 f. California Government Code Section 12926 (m)(3) which defines a "physical
12 disability" to include having a record or history of a disease, condition, or health
13 impairment as defined in section (m)(1) or (2), which is known to the employer;
- 14 g. California Government Code Section 12926 (m)(1) (A) and (m)(1) (B) which
15 states that "Physical disability" includes, but is not limited to, all of the following:
16 Having any physiological disease, disorder, condition, or anatomical loss that
17 affects body's neurological system, musculoskeletal system, or cardiovascular
18 system;
- 19 h. California Government Code Section 12926 (m)(1) (B) (ii) which states that a
20 physiological disease, disorder, condition, or anatomical loss limits a major life
21 activity if it makes the achievement of the major life activity difficult;
- 22 i. California Government Code Section 12940(h) which prohibits supervisors and
23 employers from retaliating against employees when employees do not put up with
24 statutorily prohibited conduct and exercise their rights under the Fair Employment
25 and Housing Act for terminating Plaintiff in retaliation for taking a disability
26 leave;

- 1 j. California Government Code Section 12940(m), which makes it unlawful for an
2 employer to fail to make special accommodations for the known physical
3 disability of an employee for terminating Plaintiff and refusing to provide
4 Plaintiff disability leave and refusing to engage in an interactive dialogue to figure
5 out whether Plaintiff would need any special accommodations to accommodate
6 her disability;
- 7 k. California Government Code Sections 12900, 12921, 12926, 12926(h)(2),
8 12926(h)(1), 12926(i)(1), 12965;
- 9 l. California Government Code Section 12945.2 et sec, California Family Rights
10 Act (“CFRA”), which states it shall be an unlawful employment practice for any
11 employer to refuse to grant a request by any employee with more than 12 months
12 of service with the employer, and who has at least 1,250 hours of service with the
13 employer during the previous 12-month period, to take up to a total of 12
14 workweeks in any 12-month period for family care and medical leave as long as
15 the employer employs 50 or more employees within 75 mile radius of Plaintiff’s
16 employment. Family care and medical leave requested pursuant to this
17 subdivision shall not be deemed to have been granted unless the employer
18 provides the employee, upon granting the leave request, a guarantee of
19 employment in the same or a comparable position upon the termination of the
20 leave;
- 21 m. California Government Code Section 12945.2(q) which sates it shall be an
22 unlawful employment practice for an employer to interfere with, restrain, or deny
23 the exercise of, or the attempt to exercise, any right provided under this section;
- 24 n. California Government Code Section 12945.2 (k) (1) states it shall be an unlawful
25 employment practice for an employer to refuse to hire, or to discharge, fine,
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1 suspend, expel, or discriminate against, any individual because of an individual's
2 exercise of the right to family care and medical leave;

3 o. California Labor Code Section 1102.5(b) which states that an employer shall not
4 retaliate against an employee for disclosing information, or because the employer
5 believes that the employee disclosed or may disclose information, to a person
6 with authority over the employee or another employee who has the authority to
7 investigate, discover, or correct the violation or noncompliance, or if the
8 employee has reasonable cause to believe that the information discloses a
9 violation of state or federal statute, or a violation of or noncompliance with a
10 local, state, or federal rule or regulation, regardless of whether disclosing the
11 information is part of the employee's job duties;

12 p. California Labor Code Section 1102.5(c) which prohibits retaliation of an
13 employee who refuses to participate in an activity that would violate a statute;

14 q. All other state and federal statutes, regulations, administrative orders, and
15 ordinances which effect society at large, and which discovery will reveal were
16 violated by all named and DOE Defendants by discriminating and retaliating
17 against Plaintiff, and firing Plaintiff.

19 51. Plaintiff alleges that said Defendants, and all DOE Defendants, violated articulable public
20 policies, affecting society at large, by violating the statutes as described in the above Paragraph,
21 when said Defendants terminated and retaliated against Plaintiff in violation of public policy by
22 terminating Plaintiff for the reasons stated in the above paragraph.

23 52. Specifically, Plaintiff alleges that said Defendants' violations of the above referred
24 statutes affect society at large because they affect the health and safety of workers.

25 53. As a direct, foreseeable, and proximate result of the actions of said Defendants, and each
26 of their acts as described in this cause of action, Plaintiff has suffered, and continues to suffer,
27 severe emotional distress, substantial losses in salary, bonuses, job benefits, and other
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1 employment benefits she would have received from said Defendants plus expenses incurred in
2 obtaining substitute employment and not being regularly employed for months, as well as
3 financial losses, all to Plaintiff's damage, in a sum within the jurisdiction of this court, to be
4 ascertained according to proof.

5 54. The grossly reckless and/or intentional, malicious, and bad faith manner in which said
6 Defendants conducted itself as described in this cause of action by willfully violating those
7 statutes enumerated in Paragraph 30, Plaintiff prays for punitive damages against said
8 Defendants in an amount within the jurisdiction of this court, to be ascertained by the fact finder,
9 that is sufficiently high to punish said Defendant, deter them from engaging in such conduct
10 again, and to make an example of them to others.

11 55. Plaintiff is informed, believes, and based thereon, alleges that the outrageous conduct of
12 said Defendants described above, in this cause of action, was done with oppression, and malice,
13 by Plaintiff's supervisor and manager and was ratified by those other individuals who were
14 managing agents of the Defendants employers. These unlawful acts were further ratified by the
15 Defendants employer and done with a conscious disregard for Plaintiff's rights and with the
16 intent, design and purpose of injuring Plaintiff. By reason thereof, Plaintiff is entitled to punitive
17 or exemplary damages against said Defendants for their acts as described in this cause of action
18 in a sum to be determined at the time of trial.

20
21 **FIFTH CAUSE OF ACTION**

22 **INTENTIONAL INFILCTION OF EMOTIONAL DISTRESS**

23 **(AGAINST DEFENDANT SLEEPSMED, SLEEPSMED OF CALIFORNIA AND**
24 **BIOSERENITY ALL DOE DEFENDANTS)**

26 56. Plaintiff realleges the information set forth in Paragraphs 1-12 of the General Allegations,
27 Paragraphs 13-25 of the First Cause of Action, Paragraphs 26-37 of the Second Cause of Action,
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1 Paragraphs 38-47 of the Third Cause of Action, Paragraphs 48-55 of the Fourth Cause of Action
2 above and incorporates these paragraphs into this cause of action as if they were fully alleged
3 herein.

4 57. Defendants acted intentionally and/or recklessly and subjected Plaintiff to severe
5 emotional distress by doing the outrageous acts alleged to have been done by said Defendants
6 throughout this complaint by terminating Plaintiff's employment in violation of public policy as
7 the first four causes of action indicate.

8 58. Defendants terminated Plaintiff in violation of public policy, FEHA, and CFRA, by
9 retaliating against and discriminating against her by terminating her because she had a disability
10 and needed special accommodations to work. Plaintiff's disability, and serious health condition
11 of rheumatoid arthritis, necessitated her to work from home during COVID 19 which was not
12 granted.

13 59. Defendants terminated Plaintiff in retaliation for being disabled, having a serious medical
14 condition, asserting her right to special accommodation of remote work, and taking a CFRA
15 leave as alleged in Paragraphs 8-11, the First through the Fourth Causes of Action

16 60. In doing the acts herein alleged that form the First through the Fourth Causes of Action,
17 Defendants acted outrageously with the intent of causing (or with reckless disregard of the
18 probability of causing) severe emotional distress to Plaintiff. Specifically, it was outrageous to:

- 20 a. Terminate Plaintiff in discrimination and retaliation for having the disability;
- 21 b. Terminate Plaintiff in discrimination and retaliation for needing special
22 accommodations;
- 23 c. Terminate Plaintiff in retaliation for taking CFRA leave;
- 24 d. Failing to reinstate Plaintiff after CFRA leave.

25 61. Defendants' actions, alleged in this cause of action, directly and proximately resulted in
26 Plaintiff suffering and continuing to suffer, extreme and severe anguish, humiliation,
27 embarrassment, emotional distress, mental suffering, nervousness, tension, anxiety, and
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1 depression, and causing Plaintiff to incur future medical bills, all to Plaintiff's detriment in a sum
2 within the jurisdiction of this court, to be ascertained according to proof.

3 62. As a direct, foreseeable, and proximate result of said Defendants' actions, and each of
4 their actions alleged in this cause of action, Plaintiff has suffered, and continues to suffer,
5 substantial losses in job opportunities, career losses, salary, bonuses, job benefits, and other
6 employment benefits she would have received had said Defendants' actions, and each of their
7 actions, not caused her such emotional suffering and grief, all to Plaintiff's damage, in a sum
8 within the jurisdiction of this court, to be ascertained according to proof.

9 63. As a direct, foreseeable, and proximate result of said Defendants' actions, and each of
10 their actions as alleged in this cause of action, which were intentional, malicious, oppressive, and
11 made in a bad faith manner in an attempt to vex, injure, annoy, and/or willfully and consciously
12 disregard Plaintiff's rights by taking the actions alleged in this cause of action, Plaintiff prays for
13 punitive damages against said Defendants in a sum within the jurisdiction of this court, to be
14 ascertained, according to proof, in a sufficiently large amount to punish said Defendants, deter
15 future conduct by said Defendants and others behaving like them, and to make an example of
16 said Defendants.

18 WHEREFORE, Plaintiff prays for the following relief, to be determined by a jury as
19 follows:

21 For All Causes of Action:

22 1. For general damages in an amount according to proof, but in excess of the
23 minimum jurisdiction of this court;

24 2. For special damages in an amount according to proof, but in the excess of the
25 minimum jurisdiction of this court, in order to compensate Plaintiff for her loss of
26 past and future earnings, and all damages flowing from Plaintiff's loss of earnings,

1 loss of job security, failure to properly advance within her career, and damage to
2 her reputation;

3 3. For all costs and disbursements incurred in this suit;
4 4. For such other and further relief as the Court deems just and proper;
5 5. For all interest as allowed by law;
6 6. For all general and special damages in an amount according to proof, but in the
7 excess of the minimum jurisdiction of this court, in order to compensate Plaintiff
8 for any medical expenses and suffering;

9
10 For the First Cause of Action:

11 7. For reasonable attorney's fees and costs, as allowed by law under Section 12965 of
12 the California Fair Employment and Housing Act, for the time that Plaintiff's
13 attorney spends pursuing this cause of action, and for costs;
14 8. For all equitable relief awardable pursuant to *Harris v. City of Santa Monica*
15 (2013) 56 Cal.4th 203;

16
17 For the Second Cause of Action:

18 9. For reasonable attorney's fees and costs, as allowed by law under California
19 Government Code Section 12945 et sec. California Family Rights Act, for the time
20 that Plaintiff's attorney spends pursuing this cause of action, and for costs;
21 10. For all equitable relief awardable pursuant to *Harris v. City of Santa Monica*
22 (2013) 56 Cal.4th 203;

23
24 For the Third Cause of Action:

25 9. Penalty of \$10,000.00 under California Labor Code Section 1103 for violating
26 California Labor Code section 1102.5;

10. Attorney fees for pursuing this Cause of Action under California Labor Code
Section 1102.5(j).

Dated: March 23, 2022

EMPLOYMENT LAWYERS GROUP

By:

Karl Gerber
Ann Guleser
ATTORNEYS FOR PLAINTIFF,
SANDRA BUSTAMANTE

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